



Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 316

Hearing Date: January 30, 2003

Committee On: Judiciary

Introducer(s): (Brashear, Beutler, Brown, Dw. Pedersen)

Title: Change child custody determination provisions

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7 Yes Senators Brashear, Foley, Mines, Mossey, Pedersen, Quandahl,
Tyson

No

Present, not voting

1 Absent Senator Chambers

Proponents:

Senator Kermit Brashear
Tamim Al-Timimi
George Killiam
Colleen Kavan
Shane Taylor
Les Veskrna, M.D.
Gerald Morehouse
James Laakso
Ken Hugo
Michael Rains
Peter Stecker

Representing:

Introducer
Children's Rights Council
Children's Rights Council
Children's Rights Council
Fathers' Rights Nebraska
Children's Rights Council
Children's Rights Council
Self
Self
Children's Rights Council
self

Opponents:

Cynthia Morales
Cynthia Friedman
Jim Gordon

Representing:

Self
Self
Nebraska State Bar Association, Family Law
Section
Nebraska Women's Commission
Nebraska Domestic Violence Sexual Assault
Coalition
Nebraska Women's Bar Association

Carlene Bourn
Tara Muir

Susan Ann Koenig

Neutral:

Representing:

Summary of purpose and/or changes:

Legislative Bill 316 changes provisions relating to child custody determination.

Under current statutory law, a court may award joint custody to parents if both parents agree to such award and the court finds that joint custody is in the best interests of the child.

LB 316 codifies a distinction between “physical” and “legal” custody and provides definitions of each. Such distinction is recognized in a series of child custody cases (from which the definitions are drawn) and in the Child Support Guidelines.

LB 316 provides that the court shall first consider ordering joint legal custody regardless of agreement between the parties. The existing statutory standard for joint physical custody is intended to remain unchanged.

The court need not consider joint legal custody as an option if it finds credible evidence of abuse inflicted on any family or household member.

If a court enters an order of joint custody (of any type) the court shall specify the roles and responsibility of each parent in its order.

Explanation of amendments, if any:

The committee amendment (AM 1348) makes several changes to the bill.

The amendment deletes the proposed language of the bill, “regardless of any parental agreement or consent” as to whether a court may order joint legal custody. Such a change clarifies that a court need not disregard whether the parties are in agreement as to an arrangement of joint legal custody. Such amendment is not meant to change the original intent of the bill-- that the agreement of the parties is not a prerequisite to an order of joint legal custody.

The amendment specifies that a court need not consider joint custody, of any type, as an option if it finds credible evidence of abuse inflicted on any family or household member.

Finally, the amendment provides that a court order awarding joint custody *may* include a parenting plan developed pursuant to the Parenting Act.

Senator Kermit A. Brashear, Chairperson
